**Morris, Craig**

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**From:** Karen Melnychuck (b)(6)

**Sent:** Monday, February 07, 2011 3:39 PM

**To:** TMFeedback

**Subject:** "Small Business Study"

**Attachments:** USPTO Request for Comments FEEDBACK.docx; ATT00001..htm

Sent to: TMFeedback@uspto.gov, with the subject line "Small Business Study."

## "Small Business Study"

**Request for Comments: Trademark Litigation Tactics**

Thank you for the opportunity to give you my personal feedback on *"the extent to which small businesses may be harmed* by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner and (2) the best use of Federal Government services to protect trademarks and prevent counterfeiting." I hope that my experience as a small business owner and a *pro se* defendant in a current opposition with a large corporation will provide a perspective that might be helpful in assessing the issues and finding a way to alleviate what I have found to be a challenge to our very survival as a small business. I have heard many other small business owners experiencing similar situations in dealing with large corporations in many areas. I now realize that this affects the livelihood of individuals and families, as well as the very fabric of our entrepreneurial-based country. It is also clear that this type of litigation is causing a serious misuse of the time and resources of both small businesses and the USPTO alike. Therefore, the second issue of finding the best use of Federal Government services to protect trademarks and prevent counterfeiting is also a great concern since these require funds that we are all contributing to as taxpayers. I pray that my comments would be taken into consideration by the USPTO and am willing to answer more questions or be of further assistance in any way so that what may be our demise, could at least be used for good to help change the system so that other small companies might not be harmed in similar situations.

Since I am having to try to write as much like a lawyer as possible in the opposition that I am involved in, I would like to take this opportunity to speak more freely and express my experience as the person that I actually am—a small business owner and mother trying to survive and hopefully one day prosper and contribute to the world in a positive way. I hope that the time I spend in sharing my honest feedback will help the government to better understand the daunting predicament of trying to defend yourself in a situation where;

1) No defense really seems as though it should be necessary since there appears to be no real basis (no similarity in the marks) for the litigation other than they are big, powerful and want to have ultimate control of what gets passed through as a trademark.
2) The corporations have skilled experts that know how to use of the nuances of the law to meet their needs to protect their company's profits while small business owners are in a territory completely unfamiliar and trying to navigate through huge storms of paperwork and battles with no knowledge of this type of warfare. Each bit of paperwork that I am served is like an attack—when I have done nothing wrong

since my application is simply "intent to use."

3) The government, in its understandably necessary stance of being impartial, seems only able to stand aside and watch the small business owners drown in a pathetic struggle at best—especially if they cannot afford legal representation and are having to attempt this on their own. (I feel like someone who is forced to play a solo on the violin in a symphony at Carnegie Hall when I have never touched an instrument in my life. I have been given a short amount of time to get up to speed but am expected to perform like the virtuosos who have done this for ten or twenty years—if I want to live. I am trying to learn the law as fast as possible so that we might have a chance, but I have now seen a small sampling of the lawyer I am up against and know she is one of the best!) It must be hard for the government as well to deal with the pro se defendants, what patience it must require to watch someone poorly prepared at best, try to do the impossible.
4) There is no level playing field when you consider the odds stacked against the small business and their lack of training in the law and lack of resources. I am just realizing that I have NO money for expensive surveys that could show the other side, or money for depositions for that matter. These are just small examples that give the advantage to the corporation before the battle even begins.

In my own experience, it seems as though these corporations essentially usurp the control of the government itself, by using their own power and legal maneuvering to become the "gatekeeper" as to whether or not small businesses can attain their trademark registration. My own story below hopefully shows at least one way in how this is done in at least this case and I suspect in many others. Please note that I have not named our "Opposer" specifically in this document (although the numbers are there for reference if it would be helpful to further explore.) I did this specifically so that you can read this feedback in more general terms so that it is clearly not meant to plead my specific case, but to plead some kind of help for all small businesses in general. I hope that this might be helpful and give this feedback more credibility since our hope here is to help change the system for the benefit of all. We would like to help make a stand for justice. It just does not seem right what is happening out there. Just like in David and Goliath, someone has to take a stand and sometimes it will be the smallest that could make the biggest difference. We hope that our small story could help you in making a bigger difference for us all.

**In answer to your specific questions:**

**1. Please identify whether you are a trademark owner or practitioner, and the general size and nature of your business or trademark practice, including the number of trademark applications and registrations your business has, or your practice handles. Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner.**

I am a small business owner. My daughter and I began our business to develop a series

of books, iPhone apps and shirts for girls and moms. We currently have three trademark applications. All three of our applications are "intent to use." We have attained Notice of Allowance on two of the marks. The third mark is currently in an opposition proceeding by a large corporation. This company is a small family start-up and cannot afford legal representation so I am, by necessity, a *pro se* defendant in this opposition. I am happy to identify our business and marks since I think it could be useful for you to see firsthand, what we are up against. Our marks are PinkPowerful™ for IC 025 Opposition #91196284, PinkPowerul!™ for IC 016 SN#85057159, and PinkPowerfun!™ for IC 009 SN#85056898.

**2. In approximately the last 5 years, please describe any instances of which you have first-hand knowledge where a small business may have been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner.**

First, we do feel that the opposition we are currently involved in is a good example of a corporation attempting to enforce their trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner. When we were initially served with the Extension of Time to file by our current "Opposer," we were told that if we would limit ourselves in a way acceptable to the corporation that they would allow us to have our mark under these terms with a legal agreement required with them. Upon consultation with no less than seven other lawyers, each of them told us that the marks were ***completely different*** and that there would be no issue of confusion except that the corporation was notorious for defending their marks and would likely oppose us because they have the money and resources to do so. Even those working at the Trademark office acknowledged that our "Opposer" is a frequent user of both the Extension of Time to File and Opposition. None of the ideas the corporation presented us with would work in our case and the cost to draw up a settlement was prohibitive. We realized this corporation was essentially "bullying" us into an agreement and if we signed, it would then be acting as essentially as our "overlord or police" to enforce whatever limitations they were imposing on us. We asked them three times not to oppose us since there was no similarity in the marks that should prevent us from attaining registration, but they proceeded. Now we are trying to make a stand for our mark, but are unable to work on our core business. As a result of the opposition we are having to learn the law by spending all of our hours at the local law library trying desperately to defend our rights and make a stand against what we feel is their unmerited attack. They cited 24 dissimilar marks against our one, many which have disclaimers for the only similar word. But this corporation is big and is using their power and legal expertise to stop us from attaining registration that we really should be able to have since the marks and businesses are significantly different and, this is underscored by the fact that **the USPTO found no similar marks either—which led to the initial publication.** According to the TTABVUE records, the "Opposer" we are upgainst

has been involved in 71 proceedings over the word "pink" alone. **The total number of proceedings this corporation has been involved in, when inputting their name under "party" in the TTABVUE is noted as 247!!! HOW MUCH IS IT COSTING OUR GOVERNMENT TO DEFEND THEIR BRAND??? Would the public find this acceptable and consider itself "protected?"** It would be interesting to see how many Extensions to Oppose they file each year and how each one is settled. I can see other cases where this corporation did file an Extension to Oppose, the marks were both widely known and completely different, but the applicant did amend the application so they could move ahead. We unfortunately were unable to and also feel strongly that we should not be forced into unnecessary amendments and limitations unless there truly is a reason.

**Please note the other trademark situations I am aware of are. They too really illustrate large corporations bullying small businesses and harming them:**

1) The case where, as written in Law.com, **"Nonlawyer at 9th Circuit Beats Toyota on Trademark Law"** by Cheryl Miller, The Recorder July 09, 2010

"A pro se litigant took on Toyota and won Thursday when the 9th U.S. Circuit Court of Appeals **held that her family business's domain names, buy-a-lexus.com and buyorleaselexus.com, did not infringe** on the auto giant's trademark."

Lisa Tabari said, until one day when they received a cease-and-desist letter in the mail from Toyota Motor Sales, which sells Lexuses. The company ordered the Tabaris to stop using the Lexus name in their URLs as well as Lexus marks on their website.

"The wholesale prohibition of nominative use in domain names ... would be unfair," the court held. "The only winners would be companies like Toyota, which would acquire greater control over the markets for goods and services related to their trademarked brands, to the detriment of competition and consumers."

Note: Lisa is encouraging me to fight this battle with our "Opposer" and tells me that they will use intimidation tactics to scare me into quitting, but I need to stand for what is right.

2) As written on Wired.com, **"Apple Battles Entrepreneur Over 'Pod' Trademark**

By Brian X. Chen September 22, 2009 | 3:52 pm | Categories: Media Players

"We assure ourselves that words will never hurt us, but they can cost a lot of time and money when it comes to trademark battles. Take the story of Daniel Kokin, who is continuing to fight Apple over a three-letter word: Pod.

Not iPod, mind you — just "Pod." For nine years, Kokin has been developing a video projector, whose body design he feels is best described as a pod. His "Video Pod" projector would display video from a DVD player and other multimedia equipment, but not an iPod.

In 2007, Apple filed an opposition blocking Kokin's registration of the Video Pod trademark with the United States Patent and Trademark Office, and Kokin (pictured right) decided not to back down. Thus far his efforts are paying off: USPTO recently denied Apple's motion for summary judgment, meaning the two parties must finish this battle in court in front of a judge."

"'It's an amazing feeling, it really is," Kokin said in a phone interview. "I'm a little guy, and for Apple to be kind of shut down at this stage, I feel vindicated. You start to question your own sanity after a while. Am I doing something wrong? Or am I at a disadvantage because I have no money and therefore I'm supposed to be wrong?"

Apple for years has aggressively pursued other tech companies using the word "Pod" in their products or company names. One example involved a San Francisco startup called PodShow, a social networking website for video podcasters. Apple in June 2008 filed an opposition to the company's usage of PodShow. Seven months later, Apple withdrew that opposition (.pdf). (PodShow later renamed itself to Mevio to coincide with a site redesign.)

Of course, not all entrepreneurs muster up for the challenge. Apple took the same action against TightPod, an independent, one-woman business that sold protective covers for notebooks. The proprietor, Terry Wilson, later renamed her business TightJacket.

The allegations are almost always the same: Apple claims a company's usage of "Pod" will cause confusion among consumers who have come to associate the word with the famous iPod. Apple also claims consumers will believe a product with the word "Pod" in its name is made by Apple, thus causing confusion."

Our opposer as well has a history of aggressively pursuing all other companies trying to use the word "pink." One example is with "Pinkalicious" which is clearly distinctive and in no way confusing with their brand, yet it appears that "Pinkalicious" did "limit" themselves so that they could "pass GO" and move forward without a battle with the big corporation acting as the gatekeeper.

I know the current lawyer representing this applicant in the Apple opposition above and

the battle sounds quite ugly. She says I can expect the same and it may take years. She does not think I will be successful as a *pro se* defendant as it is just so complex and quite intimidating to navigate such waters.

3) As written in the Wall Street Journal online article from Thursday, August 5, 2010, "Charity Brawl: Nonprofits Aren't So Generous When a Name's at Stake"

"As the leading breast-cancer charity, Susan G. Komen For the Cure helped make "for the cure" a staple of the fund-raising vernacular.

The slogan is so popular that dozens of groups have sought to trademark names incorporating the phrase. Among them are "Juggling for a Cure," "Bark for the Cure," and "Blondes for the Cure."

Komen sees this as imitation, and it's not flattered. Instead, it's launching a not-so-friendly legal battle against kite fliers, kayakers and dozens of other themed fund-raisers that it contends are poaching its name. And it's sternly warning charities against dabbling with pink, its signature hue.

**"It is startling to us that Komen thinks they own pink," says Mary Ann Tighe, who tangled with the breast-cancer charity over the color for her "Kites for a Cure" lung-cancer fund-raiser. "We cannot allow ourselves to be bullied to no purpose."**

Trademark turf battles characteristic of sharp-elbowed corporations are erupting across the typically amicable world of nonprofits."

It seems as though color is hotly contested in this area as well, "Last year, Ms. Tighe's Uniting Against Lung Cancer got a letter from Komen requesting it change the name of the charity's "Kites for a Cure" fund-raiser, a beach event featuring hand-decorated kites, to "Kites for a Cause," or another name. Komen later warned her against any use of pink in conjunction with "cure."

Ms. Tighe dug in her heels. She refused to change her group's name or declare pink off limits even though, she says, her group hadn't used the color. "We don't want to be the color police," says Ms. Tighe, who didn't feel she was poaching Komen's slogan."

I believe this is an example where we need to ask, "Who is ultimately in charge here? Do we need "color police?" Is it really fair to allow corporations to essentially be able to take over a "color" in a certain class of goods where it should be allowed use my the masses. (This is not so specific and unique a use as in the fiberglass industry with the Owen's

Corning pink fiberglass.) People should be able to use the color "pink" without fear of intimidation and litigation. It is not as if these companies invented the word or color "pink" so as to give them rights to something so universal that should be unprotectable. It is the manipulative use of the law that is allowing this. Why should a corporation be able to buy ownership to a common color? Is this really a protection of the consumer? No consumer would say that it is! It is for the protection of a corporation and it is wrong that the government is allowing them to have this kind of power and protection, which is costing us all dearly in so many ways. The costs of litigation are huge to our society as well as the harm being done to small businesses.

**3. Please describe situations where you have been involved in receiving a cease-and-desist letter. Anecdotal information might include, but is not limited to, a description of whether the letter resulted in the small business ceasing its use of one or more marks, or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against the small business owner.**

When we filed our first trademark application we did receive a cease-and-desist letter. I did not include this trademark application with the other three since we did an express abandonment after receiving the letter. So, yes, we were so scared and after talking to a trademark attorney who said, "you could win this, but it would cost you about $50,000. These are the 'BIG BOYS' and you don't even know what you are dealing with here." We decided to give up and develop a more unique, fanciful and protectable name. Later, when showing the cease-and-desist letter to additional trademark attorneys, they too agreed that we could have attained the mark, but the letter proved affective in its intimidation tactic. This is a one reason that we filed only "intent to use" for our PinkPowerful™ application in IC025. It was terrifying to be threatened with a suit for damages when we were just starting out! By filing with the "intent to use" for these more recent marks, we feel more comfortable fighting for them because we are not being sued for damages and would prefer to **wait until we know we have a mark secured to avoid such a suit in the future!!!** We have been told it would have been better to have used the mark first, that our case for attaining it would be better—but the stress of being sued for legal damages by a large corporation would be far worse and then our entire investment would be on the line. I cannot believe what a scary experience it is to start a small business in the United State. We were excited and having fun when we began our pursuits, until we tried to secure the protection of our branding with the USPTO. Having a secure name upon which to build is really critical! We wanted to make sure we had a name that we could invest in safely to avoid any infringement and so we applied for our marks early on in our business. Now, ironically, that is all we are able to work on—litigation to defend the rights to even attain our marks—when we have yet to even launch our products! And, the saddest thing is that now we are fearful and hesitant to launch even our other product lines until we are absolutely sure they are finalized and won't effect our opposition. We are determined to

somehow get through this, but are physically exhausted, discouraged, and have to somehow prepare for a legal battle with a **"giant of a corporation"** when we have no idea what it will entail. We are just proceeding and learning one step at a time but it is overwhelming. I am sure it is also difficult for the government to have to go through trials with pro se defendants who don't really know exactly what they are doing.

**4. Please describe situations where you have been involved in trademark litigation in state or federal courts. Anecdotal information might include, but is not limited to, a description of whether the lawsuit settled on the basis of the small business agreeing to cease its use of one or more marks, or on the basis of the plaintiff withdrawing or abandoning its trademark-related allegation(s). Alternatively, relevant information might include whether such lawsuits resulted in a court judgment and the nature of the judgment (such as requiring the small business to cease its use of one or more marks, assessing monetary liability (damages, lost profits, or attorneys' fees) against the small business, requiring the plaintiff to pay the defendant's attorneys' fees, or imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure).**

I am currently in a trademark opposition at the USPTO. Although it appears that the corporation that is opposing me does not take "no" for an answer and usually will appeal any decision against its mark in the state or federal courts. I am already prepared for that to be the case in my situation—if I can even make it that far. I am very concerned about this. I already have so much on the line as it is and could not stand for more risk. The thought that I might have to end up paying for their legal expenses if they are able to argue better than we are, is a shocking thing to even consider.

**5. Please describe situations where you have been involved in opposition/cancellation proceedings instituted at the USPTO against small business owners. Anecdotal information might include, but is not limited to, a description of whether the proceedings settled on the basis of the small business agreeing to abandon its application(s) for one or more marks, or whether the proceedings settled on the basis of the plaintiff withdrawing or abandoning its notice of opposition or cancellation petition. Alternatively, relevant information might include a description of whether such proceedings resulted in a decision by the USPTO Trademark Trial and Appeal Board ("TTAB") refusing to register/canceling one or more marks owned by the small business, or whether such proceedings resulted in the TTAB imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure.**

The opposition proceeding instituted at the USPTO against our small business is for the mark PinkPowerful™, Oppostion #91196284. Representing ourselves as *pro se* defendant is such an unbelievably hard thing to do. I am right in the middle of it and

feel like I can barely breath. I am expected to "become a lawyer" overnight in my spare time! It is all consuming, overwhelming and nearly impossible. I know that I will never have the skills to compete and must just try the best that I can. Small actions and motions taken throw me into fear and frustration as I try my best to understand what they mean, what the rules are, how to respond, how much time I have to respond, what the implications are, etc. It is mind-boggling and I am sure that it is about to get worse as Discovery opens. I am unable to work on my business at all in the midst of these "trials and tribulations." I can't quit, but I can barely go on. Each time the Opposer does anything, I have to get through my initial reaction of fear so that I can find the calm and composure to educate myself quickly and professionally in a field that is completely foreign to me and quite forbidding in it's language and several different sets of rules I am expected to know and work within. I am swimming in a pile of papers, trying to organize, hoping I can get it all down and not even ready yet to understand the steps ahead of me and what the implications of what I am currently doing on the future of the case. I have no idea of strategy for my survival since I am still just figuring out what the basic battle entails. Do I even have a chance? I can't just say it in regular English. I must research cases and know how to present Evidence. I have not even gotten that far yet. Like I said, I would like to quit, but then I can never have our mark. It's an endurance race for me now and I am exhausted. We have not been able to make any money and may even loose our home. The stakes are high and there is nothing we can do but try. The losses are so great that the term "time and resources" doesn't begin to describe what it is costing us as a small business. I would have to add to that psychological stress, cost of lost business and potential revenue, loss of livelihood, loss of sleep, loss of time with family, loss of residence, loss of sense of protection from the government and loss of freedom to pursue a small business venture without a brutal attack.

I truly have no idea what the outcome of this will be, but I pray for sanctions against them since I feel quite threatened by this corporation and do not expect that the battles will stop just with the board decision. I was told that they will likely make motions for summary judgment and sanctions against us as fear and intimidation tactics—which would work! I hope that we will not have to abandon our mark, but I am also not sure we will be able to last to the end since it is affecting our lives in such dire ways. Is it worth it? No, but the battle feels like it is bigger than just our mark. It truly feels like a battle for justice. It seems as though someone needs to stand up and say, "This is NOT right!" They should NOT be allowed to essentially "buy up a lot of real estate" on a basic word and then in practice be able to CONTROL it through the use and misuse of the law. We would come up with another name, but after great consideration, we do realize that ANY and EVERY name/mark with the word "pink" would most likely be opposed just the same. While this corporation is doing this under the "requirement" of defending their mark, they are taking up time and resources of the government and hurting small businesses—none of which truly appears to be for the protection of the consumer. I believe that any consumer who saw what is happening would not feel as though it is

them that is being protected in this battle. It is the corporation that is being protected. It is actually for the protection of their profits and power that is the real bottom line here. The government is being used for this "corporate protection of power and profits" and is also an enabler of this misguided litigation. The public is, in fact, being hurt at large through a misuse of our taxes incurred by this lengthy and unnecessary litigation. And, finally, to say that the small business owners are being "harmed" is such an understatement that it takes one's breath away when you really consider what kind of battles and bullying we are trying to survive and its impact on the viability of even having small businesses. It becomes too much of a burden. NO ONE starting a small business can afford this absurd cost and loss on all levels—let alone withstand such a battle with what is essentially a "big bully, which has too much power."

**6. Do you think trademark owners currently encounter the problem of other trademark owners using their trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow? If so, how significant is the problem?**

I don't know if other trademark owners (other than the large corporations) harass and intimidate other businesses beyond what the law might be reasonably interpreted to allow. I have been told that as a trademark owner you are expected to enforce your rights and show that you are protecting your mark. This may be where one root of the problem is. Personally, after my experience, I would be happy to concede to whatever the government says is confusing or not. If they consider that a mark is fine for publication then I would assume they are correct and feel comfortable that it is suitably different from what exists as to be allowed registration. I would not like to have to oppose another mark unless it really was almost the same. I think that the option to oppose causes great problems. The government is impartial and should have the final say unless there is an extreme problem. What I see is that companies are using this to prevent others from even getting close to their marks where it might be competition! It becomes a tool for manipulation and creates unnecessary power struggles. Then, whoever has more practice, knows the law better, can work with loopholes, out-procedure someone, or out-lawyer them, or has more power, endurance and resources, gets to win—**as opposed to looking at what the bottom line truth is—is there really a concern of similarity as to cause confusion.** Several lawyers have said that, "there is no truth," it is whoever can present the best case. While I respect that law is an art form, there should be "truth" at the foundation or we are all just playing power games at everyone's expense. How sad that it has come down to this. I do not need to go to law school to know there is a basic right and wrong, but it appears that I need to—to be able to stand up for myself where the system has allowed those with more power, money and resources to ultimately be in control—even possibly over the government.

**7. Do you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the law?**

I do think aggressive litigation tactics are extremely pervasive in the trademark area! I also think that corporations are aggressive against individuals and small businesses in other areas of the law—just because they can be. I have also seen examples with copyrights and outright stealing of designs. I have heard of examples with patents and corporations just making money off of litigation. Any area of intellectual property is such a hot topic because it is all about money and the greed in our society is at an all time high. There is very little morality now involved in the decisions that are made. If you have skilled lawyers then they can sway the argument for their own desired outcome. You are most likely more aware of this than I am, but we are all aware of this manipulation for money's sake existing at an all time high in our world, and the fact that corporate greed is at the root of much of this evil that is harming our country.

Again, *in my experience, the legal counsel representing the corporation informed me that I could have my mark if I would agree to their limitations and requirements, or, they would "oppose" our mark. I felt as though I was forced into a battle or else they would essentially be our "overlord." Several lawyers looked at our situation and said there was no merit to their case and that they were essentially "bullying us" since they had the money and resources to do so and did not want our mark out there unless they had control to limit it.*

**8. Do you think the USPTO has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should the USPTO do?**

Yes I do think the USPTO has a responsibility to do something to discourage and prevent aggressive trademark litigation tactics. As I have said, it is almost as if the government is an enabler of the misuse of the law. Once a "no" is given, it should stick! The USPTO is the expert in this area. Allowing things to proceed to another level in another court, under an appeal, is like allowing a child to go from one parent who said "no" to go to another, to see if they can get a better answer. The system has created the corporate monsters that are too formidable to fight by allowing them this power. And, it is understandable, yet unreasonable to expect small business owners to be able to have the money to survive a huge costly legal battle for a mark, or, to do it *pro se* and be skilled enough to be measured by the same standards of lawyers skilled in the top of their fields who are working for these large corporations. The USPTO needs to first STOP or curtail this practice in some way by having some mechanism in place, which creates checks and balances on the use of litigation where it is really unwarranted! The casualties are too great and people as well as businesses are being hurt and destroyed. It is so important to realize the implications of a defective system that supports and rewards the rich and powerful at the very expense of those trying to make a living and contribute their skills and talents in a unique way for the betterment of our society. I appreciate that you are trying to find a way. But each corporation you allow to win is a vote in favor of this abuse of the system. Allowing the appeals only causes more expense and a greater abuse since the corporation has just learned they

have to go to a higher more costly court to get their way and the small businesses just finally will fall off. The USPTO would also be wise to find a way to actually turn the tables to help support the small business owner going through the process. While I understand the need for impartiality, there is NO assistance to help someone understand this complex labyrinth of material. The manual is acceptable, but the burden is so great and the time to take it in is so short that it almost is not manageable—especially when taking into consideration that the small business owner has a life and responsibility outside of trying to attain a trademark.

**9. Do you think the U.S. courts have a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should the U.S. courts do?**

I especially think the U.S. courts have a responsibility to do something to discourage or prevent aggressive trademark litigation tactics. It is horrible that corporations are allowed to appeal the decisions of the USPTO! This is most likely the biggest issue since they are essentially able to then go above the "experts" in our country to get the answer *they* want. While it may be legitimate in some cases, there should be some system where this would have to be approved for it to continue further. I do think these corporations have the control in many ways, and would find a way around any limitations that were put in place. I would ask who really is in charge here? I sadly believe that it may be more of the ones with the money and the power than we would all like to admit, and not necessarily the government as it should be.

**10. What other U.S. agencies may have a responsibility to do something about the problem?**

I am not sure what other U.S. agencies may have a responsibility to do something about the problem. The real problem is to make the word "no" understandable to the corporations through the legal process. I reviewed one of my Opposer's trademarks called Pink Collegiate Collection and as I recall the answer from the government was a clear, firm and definite "no" due to descriptiveness. You could almost tell from the writing that they had dealt with this company before and knew they would try to argue it. Then, when reviewing the actions taken, it appeared that they changed legal representation and went back again and got exactly what they wanted anyways. In parenting, if you do this, you create a child with a stronger sense of entitlement and perseverance in getting exactly what they want. It seems to me that this is what is happening here. Once again, if you are rich enough and powerful enough then you can find a way to get your way! As a small business owner we are required to fight a GOLIATH if we want to exist. My six-year-old daughter and business partner keeps reminding me that it is "David" who wins! I don't have the heart to tell her that "David" didn't have to fight our "Opposer" and the overpowering tactics they "manage their brand" with—for the sake of PROFIT and POWER—not the consumer! But, Sofia is helping to fight this battle with her encouragement and I pray that by some miracle

what is an essential truth will win instead of talented legal counsel. I would like my daughter to be able to experience the world actually working for what is right and true and that our government is in power to protect us all—especially the "little guys" who need a fair chance when they are starting out.

**11. Do you think Congress has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should Congress do?**

I do think Congress has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics. It is costing us the freedom in our future for young businesses to start and thrive. In an entrepreneur course I took, it stated that small businesses are in fact the backbone of our country. To allow them to be rendered powerless is to not only harm the small businesses, but to damage the very core existence of business and its growth our country.

**12. Please provide any other comments you may have.**

The other comments I have is that I realize I may sound passionate about this topic and perhaps a bit emotional in an area of law where it is really discouraged. That said, it is only by making impassioned pleas that we are sometimes heard so that it is possible to cut to the very heart of the problem and see how these issues affect real people. It is important to truly understand the depth of the problem and the potential destructive impact it has at a much more serious level. Small businesses are important in our country and the corporations, by hurting them, are also hurting individuals, families, children, marriages—*they are hurting real PEOPLE, their lives and livelihood which is what our government is supposed to protect*—not profit and power of the biggest and richest!

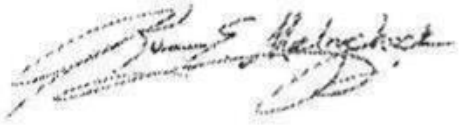
In closing, please, I just hope that our losses in our own experience can turn into something good for the government and for others. I hope that you will take this impassioned feedback and listen to these words of not only a small business owner, but a disheartened citizen who feels unprotected and underrepresented in this maze of litigation—a bottomless pit that we just happened to step into by choosing the word "pink" that my daughter loves so much. You would think that the two of us had done something terribly wrong! This is not an invented word by a corporation that deserves to essentially "own it." We, as a country, are not being "protected" when the USPTO must entertain such absurd oppositions to proceed without an attempt to help the "small guy" who obviously doesn't know the rules of the "playground." As my daughter said so simply, "mom, they need to learn how to share the word 'pink' too!"

Perhaps some of this material will appear in my final argument should we even make it that far. I am not a lawyer, but Sofia and I are going to try to defend ourselves as citizens and still have some hope that we might attain our trademark based on truth and the law and not on whether we are big, have money or have an exceptional attorney

who can skillfully make the better case because they know how to use the law to their favor. Children have a real sense of what is right and wrong. It is for Sofia that I am fighting this battle. I hope she wins! She will hopefully be a great business leader in our country one day. Her sense of power is built on integrity, truth, and charity towards others.

Our very best wishes for you to make improvements. Please let us know if we can help in any way!

Sincerely,



Karen E. Melnychuck

(b)(6)